Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	CC Docket No. 98-147
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	

REPLY COMMENTS OF CTC COMMUNICATIONS CORP. URGING UNE-P AVAILABILITY

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REPLY COMMENTS OF CTC COMMUNICATIONS CORP. URGING UNE-P AVAILABILITY

CTC Communications Corp. ("CTC") submits these Reply Comments[1] in response to the Federal Communications Commission's ("Commission's") above-captioned notice of proposed rulemaking[2] ("NPRM") initiating a Triennial Review of the Commission's policies regarding the unbundled network elements ("UNEs") that incumbent Local Exchange Carriers ("ILECs") are

[1] CTC is also submitting one other set of Reply Comments. The other set of Reply Comments relates to dark fiber and is submitted jointly with El Paso Networks, LLC ("*Dark Fiber Commenters*"). The Reply Comments provided herein address and request unbundled switching in combination with other network elements that make up unbundled network platform ("UNE-P").

[2] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-339, Notice of Proposed Rulemaking, FCC 01-361, (rel. Dec. 20, 2001) (*"Triennial UNE NPRM*").

required to provide to requesting carriers pursuant to Sections 251(c)(3) and 251(d)(2) of the Telecommunications Act of 1996 ("1996 Act").[3]

I. INTRODUCTION AND SUMMARY

In their initial comments, ILECs argue that UNE-P is not a migratory route to switch or other facilities-based deployment. They claim that UNE-P has failed to serve its purpose to bridge the gap to facilities-based competition and that its existence diminishes CLEC incentives to invest in their own infrastructure. These claims are flatly wrong. As explained in these Reply Comments, CTC is a facilities-based CLEC that serves small, medium, and large business customers. CTC has deployed its own switches and deploys fiber facilities to expand the reach of its switches where such network expansion is justified by actual customer demand and traffic usage.

CTC employs a business plan that targets small and medium sized business customers across an ILEC's serving area. This business strategy requires the use of UNE-P to provision services until customer demand is sufficient to support the expansion of its network. Without UNE-P, CTC's effort to serve business customers in the most prudent and cost-effective fashion and ongoing effort to deploy facilities will be significantly curtailed.

The Commission's necessary and impair standard, as explained below, fully and soundly supports a determination that UNE-P and the UNEs that compose it be made available without restriction. UNE-P, as explained below, is integral to the creation of a robust competitive marketplace that fosters facility investment by ILECs and CLECs alike. Notably, the

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[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 251 *et seq*.; *see* 47 U.S.C. §§ 251(c)(3) and 251(d)(2).

Commission should eliminate, if not substantially reduce, the limitation it prescribed that is associated with accessing unbundled switching. Further, the Commission should require unbundled access to OS/DA because marketplace realities make it evident that CLECs are materially impaired without it under the current conditions. Overall, these unbundling determinations will promote the prompt development of competition to serve the greatest number of customers as intended by the Act.

II. CTC'S MARKET ENTRY STRATEGY RELIES ON UNE-P AS A MIGRATORY ROUTE TO FACILITIES-BASED DEPLOYMENT.

A. CTC's Market Entry Strategy is a Sound Approach to Facilities-Based Deployment.

CTC is a facilities-based provider that serves small, medium, and large sized business customers and relies on UNEs to access them. Notably, CTC has deployed an advanced broadband, packet-based network using softswitch technology, called the PowerPath® Network, that spans from Maine down to Virginia. The Company has or is in the process of completing its local interconnection arrangements throughout the Verizon footprint in these states which will enable CTC to expand its portfolio of converged facilities-based long distance, internet, frame relay and other data service offerings in these markets to include local dial tone. CTC's converged services are available to consumers at a cost savings over ILEC services that ranges from 15% to 40%.[4] In addition, CTC has submitted a patent application for its innovative technologies which is the culmination of a substantial and innovative development and

[4] *See CTC Communications Comments on Recent Industry Announcements By Major Carriers On Deployment of Packet Switching Within Their Networks*, Press Release, July 10, 2002.

integration effort that included an innovative new network architecture, voice services development, and IS/IT systems that integrate and "glue" it all together.[5]

CTC's current fiber network plans span through primary and secondary markets in the Northeast from Maine to Virginia. CTC currently provides service to over 50,000 customer locations throughout its footprint with its business strategy being such that critical customer masses are built in parallel with the deployment of new fiber and facilities. With respect to existing data customers residing on existing fiber facilities, those customers are migrated on to CTC's local dial tone upon completion of its local interconnection arrangements throughout the Verizon footprint. As such, UNE-P not only provides a transitional vehicle for providing service in those markets where CTC has yet to deploy its fiber network, it also provides CTC with an interim solution for offering bundled telecommunication service. CTC's business model and ability to continue to extend its innovative packet-based network to serve new areas and broad base of business customers would be significantly impaired, if not destroyed, if access to UNE-P network elements were denied.

CTC employs a market entry strategy that is simple and straight forward. The Company relies on the use and deployment of its own facilities to the greatest extent possible when it is economically feasible to do so. This strategy is designed to maximize and differentiate CTC's service offerings, ensure greater operational and quality control over its services, and minimize transaction and litigation costs, regulatory uncertainties, and other obstacles inherent in using UNEs. As a general matter, CTC's expansion plans are contingent upon capturing a critical mass of customers in a given area that justifies the investment in network infrastructure to serve

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[5] *See CTC's Integrated Communications System is a New Invention*, Press Release, October 22, 2001.

such areas.[6] When entering new markets, the Company's business strategy predominantly relies on UNE-P as a transitional market entry vehicle to service its customers until it cultivates a customer base that justifies network expansion and investment in new fiber and facilities. Once such a customer base is cultivated, the Company's plans call for the expansion of facilities and the migration of customers onto its network. When CTC does deploy such facilities, CTC's business plan also calls for migrating such UNE-P business customers to its own network using UNE loop and possibly UNE loop and transport combinations where necessary to route traffic back to its switch. In short, UNE-P is the vital first step of the Company's business plan that seeks to acquire the critical mass of business customers needed to justify the deployment of its own facilities.[7]

CTC has chosen this market strategy because it is uneconomical to build facilities and incur all the costs associated with doing so where current customer demand is relatively low.[8] Indeed, evidence in the marketplace has proved that this has been a fatal CLEC deployment decision. Generally speaking, for a CLEC to provide voice service to one or a few small size business customers, the CLEC would incur thousands of dollars in costs in collocating at an ILEC's end offices and backhauling the voice traffic to its network. These facilities would be greatly underutilized and, as a result, the CLEC would incur substantial losses. Moreover, until it builds a critical mass of customers or a substantial customer base, the CLEC, by using its

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[6] Because UNE rate deaveraging generally results in UNE rates that are higher than ILEC retail rates in rural areas, CTC neither has the resources nor the size to absorb such costs and cross subsidize them as ILECs do. As a result, CTC's entry into these areas is thwarted.

[7] *See also* AT&T Comments at 223.

[8] Notably, a marketplace reality that keeps demand low, in part, is because the contracts an ILEC has with its customers, which are provided services out of the same central office, expire at different times and it is this variable timing that further frustrates a CLEC's ability to assemble a critical mass of customers out of that office.

facilities in such instances, cannot achieve the economies of scale that the ILEC enjoys. Therefore, it makes no economical sense to deploy facilities until such costs are rationally justified. In addition, CTC has previously relied heavily on resale as its transitional vehicle to build its customer bases in the different markets targeted in its initial network deployment plans. The margins realized with this approach, however, have not supported the expense associated with its network deployment. For these reasons, using UNE-P as an entry strategy is the most prudent approach because it enables CTC to target business customers in new markets and, when a critical mass of customers has been achieved, grow its network in the most cost-effective fashion.

B. UNE-P is Integral to the Creation of a Robust Competitive Marketplace that Fosters Investment by ILECs and CLECs Alike and if UNE-P is Unavailable, CTC Will Not be Able to Enter the Market in a Manner that is Cost-Effective and Rationally Supports the Deployment of Facilities.

The contention of ILECs that UNE-P should no longer be retained because CLECs are not using it as a stepping stone to facilities-based competition[9] is as CTC has demonstrated above, flatly wrong. *CTC does invest in facilities. CTC does invest in switches. CTC does invest in fiber. And it does so using sound business judgment.*

Contrary to the ILECs' claims otherwise, the evidence speaks for itself. CLECs have demonstrated that the availability of UNE-P significantly spurs facilities-based investment by CLECs and ILECs alike and enhances facilities-based competition. AT&T presented a economic analysis that demonstrates the spurious nature of assertions made by ILECs and their underlying reasons that UNE-P does not reduce facilities-based competition. The analysis actually proves that the availability of UNE-P actually *increases* ILECs' incentives to build,

which they are generally reluctant to do, because UNE-P is a precursor to facilities entry by CLECs.[10]

Furthermore, bottom-line profitability and network control demands facilities-based deployment. As MCI explained in its Comments, because the profit margins for facilities-based services are more than 1.5 times those of UNE-P, the market itself drives the incentive to provide facilities-based services.[11] Moreover, CTC, as with CLECs generally, prefers direct control over the networks and facilities used to provision services to its customers.

Moreover, lessons learned over the past three years are dispositive. AT&T in its comments regarding the past and what the Commission should recognize going forward bear repetition and should resonate throughout the Commission.

> The general industry-wide collapse of facilities-based competitors teaches at least four lessons of central importance here. First, CLECs do not need additional incentives to invest in facilities, because they will strain to do so -- and err on the side of doing so -- rather than use UNEs whenever they believe the economics of that choice are even close. Second, the sound business model that worked in the long-distance market has not changed: carriers still need an opportunity to grow into markets before they will be able to successfully build and use alternative facilities. Third, if facilities investment occurs prematurely, either because the market or the regulatory context precludes them from filling their facilities with sufficient traffic, the result will be not more facilities-based competition, but more failures of facilities-based competitors. And fourth, the capital markets, fresh from recent experience, will not fund further CLEC investment unless the economic case for doing so is especially compelling. The suggestion that the Commission could encourage either CLECs or their potential investors to commit more funds to building facilities by withholding access to UNEs is thus either naive or disingenuous, for it completely fails to appreciate that such business decisions are necessarily driven by entirely different considerations. Those considerations -- in particular, the overriding superiority of providing competitive

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9 Verizon Comments at 103, SBC Comments at 76.

10 AT&T Comments at 66-68.

11 Worldcom Comments at 83.

> service through alternative facilities rather than UNEs means that the availability of UNEs will not deter investments that would otherwise be made.[12]

The Commission should be guided by such marketplace realities and not limit the availability of UNE-P service. The ill effects of doing so will hamper, if not entirely foreclose, CTC's ability to enter into new markets. Such an outcome would be at odds with the Commission's goals of encouraging competition and minimizing barriers to entry. Importantly, it is CTC's position that, without UNE-P, it will be unable to enter markets in the most prudent and economically justified manner. As a result, its current network expansion plans as described above, will grind to a halt and be severely jeopardized, if not abandoned altogether. If the Commission does anything with respect to UNE-P, the switching component, as explained below, should be expanded.

III. UNDER THE COMMISSION'S EXISTING NECESSARY AND IMPAIR STANDARD, THE ILEC NETWORK ELEMENTS THAT COMPOSE UNE-P SHOULD BE ACCESSIBLE.

Pursuant to Section 251(d)(2)(B) and a practical and rational application of the Commission's existing necessary and impair standard, the network elements that make up UNE-P must be made available. These UNEs include the loop, local switching (which includes access to signaling and databases), shared interoffice transport, signaling and operator services/directory assistance ("OS/DA").

The Commission's existing necessary and impair standard, as set forth in Commission Rule 51.317, is appropriate today and justifies unbundling these elements going forward. FCC Rule 51.317(a) reflects the "necessary" standard that applies to unbundled network elements that are "proprietary" in nature. Rule 51.317(b) reflects the "impair" standard which arguably applies

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[12] AT&T Comments at 52.

to unbundle all other network elements. When evaluating the UNEs that compose UNE-P, an analysis under FCC Rule 51.317(b) is appropriate and an analysis under 51.317(a) is not because the unbundled access that is being sought is not protected by patent, copyright or trade secret law.[13] Moreover, the discrete elements that make-up UNE-P have been previously found non-proprietary in nature, as a general matter, by the Commission.[14]

In the *UNE Remand Order*, the Commission held that an ILEC's failure to provide access to a non-proprietary network element "impairs" the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside of the incumbent's network, including self-provisioning, by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element *materially diminishes* a requesting carrier's ability to provide the services it seeks to offer.[15] In order to evaluate whether there are alternatives actually available to the requesting carrier as a practical, economic, and operational matter, the Commission evaluates the totality of circumstances associated with using an alternative. In particular, the FCC's impairment analysis considers cost, timeliness, quality, ubiquity, and operational issues associated with the use of the alternative.[16] Along with these considerations, the Commission may consider the underlying goals of the Act and apply a limiting standard that considers the rapid introduction of competition in all markets,

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13 *See* 47 C.F.R. § 51.317(a).

14 *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 15 FCC Rcd 3696, ¶¶ 180, 246, 373, 385, & 408. (rel. Nov. 5, 1999) ("*UNE Remand Order*"), *remanded, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("USTA Decision"). On July 8, 2002, the Commission filed a Petition for Rehearing or Rehearing En Banc regarding the USTA Decision.

15 *UNE Remand Order* at 10; *see* 47 C.F.R. § 51.317(b)(1).

16 *UNE Remand Order* at 10; *see also* 47 C.F.R. § 51.317(b)(2).

promotion of facilities-based competition, investment, and innovation, reduced regulation, certainty in the market, administrative practicality.[17] Upon consideration of all of these factors, the FCC should arrive at the inescapable conclusion that UNE-P network elements and OS/DA should be unbundled.

A. Unbundled Loops Meet the Standard and Must be Made Available.

Loops are the quintessential ILEC bottleneck facilities that must be unbundled pursuant to Section 251(b)(2). Since the Commission released its *First Local Competition Order* and its *UNE Remand Order*, the circumstances in the marketplace have not changed to lead the FCC to a different conclusion. To the contrary, self provisioning is not a viable alternative to the ILECs loops because replicating an incumbent's vast and ubiquitous network would be prohibitively expensive and delay competitive entry. Indeed, deployment of local loops requires access to tremendous amount of capital, rights of way, inside wire all of which not only take prolong period to get, if possible, but also make deployment a cost prohibitive barrier to entry. As the Commission previously found, which is equally applicable at this time, "without access to unbundled loops, CLECs would need to invest immediately in duplicative facilities in order to compete for most customers, and that such investment and construction would likely delay, if not prohibit, market entry and postpone, perhaps indefinitely the benefits of telephone competition."[18]

Given today's tight financial markets and CLECs' limited investment capital, the CLEC industry would be obliterated if loops were removed from the national minimum list of UNEs. Indeed, at this time, it safe to say that convincing investors to invest in replicating ILEC loop

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[17] *UNE Remand Order* at 10; *see also* 47 C.F.R. § 51.317(b)(3).

plant would be virtually impossible, even in densely populated areas. In short, repealing a UNE loop requirement would be a slap in the face of Congress since it would conspicuously undermine the pro-competitive policy of the 1996 Act.

Moreover, although alternative loop facilities exist today, i.e., mobile telephone, fixed wireless, and cable telephony, they are not as widespread as an ILEC's ubiquitous network and do not offer the same robust functionality as an ILEC wireline service that CLECs can use as alternative facilities in providing services to its customers. Therefore, the Commission, for the above reasons, should stand firm on its mandate that ILECs unbundled local loops.

B. Unbundled Local Switching Meets the Standard and Must be Made Available with Limited Restrictions, if Any.

Nothing has changed in the marketplace that warrants any change to the Commission's previous conclusion that unbundled local circuit switching[19] meets the "impair" standard set forth in section 251(d)(2). If anything, actual industry experience since the *UNE Remand Order* was released fully demonstrates that the previous limitations associated with the availability of switching[20] should be repealed or loosened.

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[18] *UNE Remand Order* ¶ 182.

[19] This includes the signaling systems and databases the ILEC switches utilize. As Worldcom explained, an ILEC's switching element works in tandem with the ILEC's signaling network. Worldcom Comments at 121. Therefore, unbundled ILEC switching is entirely inoperable without access to the ILEC's corresponding network. *Id*. In addition, a CLEC that is using unbundling switching must, as a matter of necessity, use the related databases. *Id*. at 123. The ILEC switch cannot query the ILEC databases for calls originating with ILEC customers and CLEC databases for calls originating with CLEC customers. *Id*. at 123. Nothing has changed in the marketplace to reverse the Commission's previous determination that ILEC signaling and databases be provided with unbundled switching. *See UNE Remand Order* ¶¶ 386 & 410.

[20] In the *UNE Remand Order*, the Commission did not require ILECs to offer access to local switching when used to serve customers with more than three lines that local in Density Zone 1 of the nation's to 50 Metropolitan Statistical Areas. *See* 47 C.F.R. § 51.319(c)(1)(B).

Applying the Commission's impair standard once again leads to the ultimate conclusion that CLECs are materially impaired without access to switching necessary to provide UNE-P. This is especially so for CLECs who strive to serve customers throughout an ILEC's footprint regardless of the customer's location or number of lines. Significantly, the Commission's impair standard, when applied to switching, requires investigation into two options. The first involves leasing incumbent switching as a UNE and the second involves obtaining switching elsewhere, such as from a third party or through self provisioning. At this time, the latter options are not economically practical, feasible, or reliably available (especially when entering new markets) and, as a result, CLECs are materially impaired without access to switching. Therefore, the Commission, for the reasons below, should require that ILEC switching be fully available and accessible as a UNE with no restrictions.

First, ubiquity is tantamount to offering services throughout an ILEC's serving area that employ UNE-P. Consequently, for a CLEC to offer such services, switching needs to be fully available throughout a ILEC's service area and cannot be limited or subject to certain carve out exceptions.

Second, it is cost prohibitive for CLECs to self-provision switches in a manner that ubiquitously captures the same market as an ILEC, and the costs materially diminish a CLEC's ability to provide its services. Such costs CLECs face include astronomical physical collocation charges and costs associated with backhauling transport to a CLEC's switch. In fact, for a CLEC to offer services throughout an ILEC's service area that replicates the ILEC's offerings, the CLEC would have to incur significant costs associated with collocating in numerous central offices and establishing backhaul transport from such locations to the CLEC's switch. Because

CLECs do not benefit from the tremendous economies of scale that ILECs enjoy, particularly in the early stages of CLEC entry, these costs are a barrier to entry to CLECs.[21] This is because ILECs have far larger customer bases and therefore their economies of scale using circuit switching are greater and as a result their per unit switching costs are lower in general.[22] Consequently, ILECs retain material scale advantages over CLECs with regard to provisioning and operating switches.

UNE-P and the local switching component, however, enable CLECs to establish critical market masses within a relatively small geographic area. Once a CLEC secures a sufficient amount of customers, it can then build a more efficient network with fewer nodes required for customer points of access. This network deployment alleviates the requirement to install and incur the significant costs of long haul facilities needed to bring individual customers on to its network. Therefore, unbundled switching is a necessity for CLECs, especially smaller ones as the Commission previously recognized, because the availability of it mitigates early-stage entry barrier and is consistent with Congress' intention that CLECs use UNEs as a transitional market entry strategy.[23] Moreover, as the Commission previously found and is still the case today, CLECs, especially smaller ones, have not gained sufficient market share to generate switch utilization rates and economies of scale comparable to ILECs.[24]

Third, the time involved in deploying switches remains a time intensive process that justifies unbundling switching. Specifically, the deployment of switches continues to require 6 to

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21 *See also UNE Remand Order* ¶ 260.

22 *See also UNE Remand Order* ¶ 260.

23 *See also UNE Remand Order* ¶ 261.

24 *See also UNE Remand Order* ¶ 260.

12 months of lead time before it can be fully operational.[25] Moreover, collocating in ILEC central offices imposes a substantial delay on CLECs that offer services using self-provisioned switches, and materially limits the scope of customers they may serve quickly.[26]

Fourth, the coordinated cutover process (otherwise known as a coordinated hot cuts or hot cuts), which takes place to connect an unbundled loop to CLECs switch, is costly and inherently unreliable. ILEC hot cuts have all too frequently resulted in provisioning delays, prolonged outages, customer disruptions, and other service problems that customers will not tolerate.[27] Moreover, the cost is prohibitive.[28] In short, CLECs serving a broad base of customers would experience material impairment in terms of cost, quality timeliness, and impact on network operations if switching where not unbundled (thereby making UNE-P unavailable) and were otherwise forced to rely on the hot cut process. Tellingly, Even one major RBOC has practically admitted to this point before the Texas Public Utilities Commission.[29]

Fifth, notwithstanding the above material impairments, other significant provisioning problems exists that compel the unbundling switching and the availability of UNE-P. Specifically, CLECs are foreclosed from accessing loops provisioned over Digital Loop Carriers ("DLC") that ILECs utilize to provision UNE-P. In most cases, ILECs use DLCs to carry multiple customer traffic from a remote terminal to the ILECs central office over a single facility*, i.e.,* a copper wire or fiber, rather than using separate facilities for each customer. DLCs

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[25] *See also UNE Remand Order* ¶ 268.

[26] *See also UNE Remand Order* ¶ 267.

[27] *See also* AT&T Comments at 214-217; UNE-P Platform Coalition at 46.

[28] *See also* AT&T Comments at 216; UNE-P Platform Coalition Comments at 45 (explaining that in Texas an electronic migration charge is 90% less than the hot cut charge).

[29] *See* UNE-P Platform Coalition Comments at 49.

are used in situations where the cost of the equipment is more than offset by the savings associated with the elimination of a large number of individual copper pairs.[30] Because the DLC aggregates traffic over a single facility, CLECs seeking access to individual customer loops in order to provide their own switched based service are generally unable to do so in a manner that is economically justified.

Specifically, to access DLC loops, CLECs only have two options that are both cost prohibitive and impractical.[31] The first requires the customer to be transferred manually during a field visit to copper loops that are available or otherwise spare because the DLC replaced it. Because of the significant amount of work associated with this manual effort and use of older copper facilities, the transmission quality of the line degrades.[32] The second alternative requires the use of prohibitively expensive multiplexing functions to strip the CLEC's traffic and transport it back to the CLEC's switch.[33] Therefore, the alternatives CLECs have are nothing more than a Hobson's choice that clearly demonstrate the material impairment CLECs will face if ILECs are not required to provide UNE-P.

Sixth, ILEC's benefit from the dramatic cost and technical efficiencies of automated and electronic loop provisioning that CLEC's cannot currently replicate.[34] Indeed, if switching is not available as a UNE, CLECs that rely upon UNE-P will confront serious manual difficulties and significant costs resulting from hot cuts that ILECs do not face. To be competitive with ILECs, CLECs will be unable to recover such costs in their rates. This in turn will literally squeeze the

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30 *See* Newton's Telecom Dictionary (14th ed. 1998).

31 *See also* AT&T Comments at 213.

32 *See also* AT&T Comments at 213.

33 *See also* AT&T Comments at 213.

financial life out of CLECs and drive a stake in the heart of mass market CLEC competition. Thus, the Commission is absolutely correct that ILECs must have implemented an effective way to move such loops to a competing carrier's switch before it even considers excusing ILECs from the obligation to provide unbundled switching.[35]

Finally, market realities do not support continued limitations on the availability of unbundled switching in the top 50 MSAs for customers with four or more lines. As demonstrated by CLECs in this proceeding, this unbundling carve out materially impairs competitive provisioning of voice services to customers throughout an ILEC's serving area, especially for any low volume customer location.[36] Tellingly, there has been little or no facilities-based competition for customers served by less than a DS-1 capacity loop and the exception has benefited ILECs because it effectively locks out such customers from seeking service alternatives through CLECs. As previously explained, the economic realities do not justify CLEC facility deployment for mass market entry strategy that focuses on customers with more than just three lines. At bottom, this per line exception is entirely under inclusive, unrealistic, and impractical.

Therefore, beyond complete repeal of the limitation to unbundled switching, any exception should be softened at a minimum and should be no less than the economic cross over point that customers purchase a DS-1 rather than individual loops. Notably, the New York Public Service Commission recently increased the UNE switching exception to customers with 18 lines because empirical data demonstrated that customers cross-over to DS-1 service at that

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34 *See also* AT&T Comments at 235.

35 *See Triennial UNE NPRM* ¶ 59.

point.[37] Therefore, if the Commission continues to use a line count for a switching exception, it should be based on a reasonable customer cross-over point between analog a voice-grade loops and a DS-1 loop. As AT&T has presented in this proceeding, 18-20 lines is the most appropriate proxy for a DS-1 upon which any limitation should be established for unbundled switching.[38]

C. Unbundled Shared Interoffice Transport Meets the Standard and Must be Made Available.

In the *UNE Remand Order*, the Commission concluded that a CLEC's ability to provide the services it seeks to offer is impaired without access to the ILEC's unbundled shared transport and therefore ordered the unbundling of it.[39] As the Commission explained, "without access to unbundled shared transport, a requesting carrier would have to self-provision or purchase dedicated transport from the ILEC, which would materially increase the costs and decrease the quality of services the requesting carrier could provide, and would materially limit the carrier's ability to serve a broad base of customers."[40] Since the Commission rendered this decision, nothing has changed in the marketplace to reverse it.

Unbundled shared ILEC transport remains a vital component in the development of local competition. At this stage of local competition, there remains a lack of ubiquitous transport alternatives to CLECs and unbundled shared transport continues to be a crucial aspect of a

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[36] *See, e.g.,* AT&T Comments at 232.

[37] *Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to investigate the Future Regulatory Framework; Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case Nos. 00-C-1945 & 98-C-1357, Order Instituting Verizon Incentive Plan, at Appendix A Sec. III.B. (N.Y. P.S.C. Feb. 27, 2002) ("*Joint Proposal*"), *available at* http://www.dps.state.ny.us/fileroom/doc11226.pdf.; *see also* Worldcom Comments at 90.

[38] AT&T Comments at 233.

[39] *UNE Remand Order* ¶ 374.

[40] *UNE Remand Order* ¶ 374.

market entry strategy that relies on UNE-P. The wholesale market for alternative transport is not even close to being ubiquitous, as ILECs contend. It will take years for this market to develop even in those areas of the country where competition is most advanced. This is because CLECs do not have the customer base, traffic volumes, or the investment capital to justify the replication of an ILEC's transport network, even in small geographic areas.

Furthermore, without unbundled shared transport, a mass market strategy would be practically infeasible for large well funded CLECs, let alone smaller CLECs such as CTC. Moreover, no rational investor, especially during these hard economic times, would support such an impractical undertaking. Indeed, the increased cost that would be associated with obtaining transport from another carrier, to the extent one is possibly available, or self-provisioning, would unequivocally materially impair CTC's ability to compete with an ILEC who enjoys the economies of a fully robust and ubiquitous network. The fact still remains that CLECs, especially in the early stages of entering a local market, are materially impaired without unbundled shared transport because they do not have the resources nor the call volume level to purchase facilities that fully replicate an ILEC's transport network across its footprint.

D. Unbundled OS/DA Meets the Standard and Must Be Made Available.

In the *UNE Remand Order*, the Commission refused to unbundle OS/DA so long as custom routing was made available. Significantly, the Commission's analysis improperly focused on whether OS/DA alternative providers were available rather than considering whether OS/DA traffic could be delivered to them in an efficient manner.[41] Otherwise said, the impairment is not contingent upon the existence of alternatives *but rather* the practicality and

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41 *UNE Remand Order* ¶ 446.

financial feasibility of routing such traffic to the alternative providers utilizing customized routing. With respect to a UNE-P offering, the impairment is material.

UNE-P providers enter the market by offering competitive options to customers in urban, suburban, and rural markets across the nation. Customers are dispersed throughout ILEC serving areas and, as a result, UNE-P providers, for the most part, do not have the ability to aggregate and transport OS/DA traffic in a cost-effective fashion as the Commission previously envisioned. Instead, UNE-P providers are now faced with purchasing dedicated DS-1 transport facilities across widely dispersed ILEC serving areas to haul limited amounts of OS/DA traffic from the end offices where UNE-P customers are served to alternative OS/DA providers. Notably, for a CLEC to justify a DS-1 trunk, it must at a minimum acquire a significant market share in a given market or out of a certain end office, which as a general matter is not the case. Normally, the wide disbursement of customers and DS-1 trunks along with the corresponding low OS/DA traffic on them extremely limits a CLEC's ability to serve a broad base of customers.

The Commission must recognize further that because of these issues and because OS/DA are not available as UNEs, CLECs have no other choice but to enter into contracts with ILECs or accept ILEC tariff provisions with onerous terms and volume commitments that have significant termination liabilities. Therefore, consistent with the views expressed by other UNE-P providers and state commissions,[42] the Commission should find, that OS/DA should be unbundled because CLECs are materially impaired without access to these elements.

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[42] *See* UNE-P Platform Coalition Comments at 58.

IV. MAKING UNE-P, AND THE NETWORK ELEMENTS THAT COMPOSE IT, ALONG WITH OS/DA FULLY AVAILABLE AND ACCESSIBLE AS UNES IS CONSISTENT WITH AND PROMOTES THE GOALS OF THE ACT.

As demonstrated above, requiring incumbent LECs to provide unbundled access to the elements that make up UNE-P and OS/DA is consistent with the Act's goal of encouraging CLECs to rapidly enter the local market and serve the greatest number of customers. Mandating such unbundled access is particularly important because it addresses the needs of CLECs, especially those in the early stages of competitive entry, by allowing them to develop the customer base required to cost-effectively justify facilities-based deployment. As the FCC previously concluded - a determination that is equally applicable now, "the ability of requesting carriers to use unbundled network elements, including various combinations of unbundled network elements, is necessary precondition to the subsequent deployment of self-provisioned network facilities."[43] Furthermore, such unbundling is consistent with Congress' expectation that "competitors would use unbundled elements from incumbent LEC until it was practical and economically feasible to construct their own networks."[44] Moreover, with such unbundling, CLECs will be able to serve small businesses on a mass market basis in a cost-effective fashion because this market segment does not support traffic volumes that justify the use dedicated facilities.[45] Accordingly, the Commission should find that requiring such unbundled access promotes the prompt development of competition to serve the greatest number of customers, as intended by the Act.

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43 *See UNE Remand Order* ¶ 5.

44 *See UNE Remand Order* ¶ 6.

45 *See also UNE Remand Order* ¶ 379.

V. CONCLUSION

For the foregoing reasons, CTC requests that the Commission conclude this proceeding, in accordance with the recommendations herein, at the earliest possible date.

Respectfully submitted,

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